

IN THE INCOME TAX APPELLATE TRIBUNAL
NEW DELHI BENCH "A": NEW DELHI

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA Nos.2478/DEL/2007 & 4242/DEL/2009
Assessment year : 2003-04

Amazer Investment & Finance Ltd., 107, Bharat Chamber, 70, Scindia House, New Delhi – 110 001. PAN: AAACA 5424A	Vs.	The Assistant Commissioner of Income Tax, Circle 1(1), New Delhi.
APPELLANT		RESPONDENT

Appellant by	:	S/Shri Anoop Sharma & Sahil Sharma, Advocates
Respondent by	:	Shri S.K. Jain, DR

Date of hearing	:	20.09.2016
Date of Pronouncement	:	21.09.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

These are appeals preferred by the assessee against the respective orders of the CIT(Appeals). Since the appeals were heard together, these are being disposed of by this consolidated order. We, however, prefer to adjudicate them one after the other.

ITA No.2478/Del/2007

2. This appeal is preferred by the assessee against the order dated 25.01.2007 of the CIT(Appeals)-IV, New Delhi *inter alia* on the following grounds:-

- “1. That the learned CIT(A) has erred both on facts and law in treating the profit arising from sale of shares of Apollo Tyres Ltd. (out of its investments) as business profits thereby rejecting assessee’s treatment of said income as long term capital gains.
 - 1.1 That the learned CIT(A) has erred both on facts and in law in upholding the views of the assessing officer that the conversion of stock in trade into investment by the assessee was patently wrong and carried out with malafied intention of evading tax.
 - 1.2 That the learned CIT(A) has erred in upholding assessing officer’s decision that the conversion of shares from stock-in-trade to investments should have been made at Fair Market Value and not on book value as done by the appellant.
 - 1.3 That the learned CIT(A) has erred in confirming the decision of the assessing officer that for the purpose of determining whether a capital asset is a long term or a short term capital asset, the period of holding of the capital asset should be calculated from the date of conversion of shares from stock-in-trade to investment and not from the date of acquisition.
2. That the appellant craves leave to amend, alter, add or to withdraw any of the above grounds of appeal before or at the time of hearing of the appeal.”

3. During the course of hearing, the Id. Counsel for the assessee has candidly admitted that the impugned issue in this appeal is squarely covered by the judgment of the Hon’ble jurisdictional High Court in the case of *Splendor Constructions Pvt. Ltd. v. ITO in ITA No.662/2009 dated 16.09.2009* in which the Hon’ble High Court has held that the asset in

question as capital asset only from the date it is converted into capital asset i.e., 1.4.2002 as it is only on that the said asset ceased to be stock in trade and was treated as capital asset. Accordingly, the question was answered in favour of the revenue and against the assessee and the appeal of the assessee was dismissed. Copy of judgment of Hon'ble High Court is placed on record and following the same, we decide the impugned issue against the assessee and confirm the order of CIT(Appeals).

ITA 4242/Del/2009

4. This appeal is preferred by the assessee against the order dated 17.08.2009 of the CIT(Appeals)-IV, New Delhi *inter alia* on the following grounds:-

- “1. That the learned CIT(A) erred in upholding penalty u/s 271(1)(c) of the Income tax Act, 1961, levied by the assessing officer vide his order dated 31.3.2008, without considering the facts and provisions of section 271(1)(c) and the judicial pronouncements thereof in their proper perspective.
2. That the appellant craves leave to amend, alter, add or to withdraw any of the above grounds of appeal before or at the time of hearing of the appeal.”

5. During the course of hearing, the Id. Counsel for the assessee has invited our attention to the order of Tribunal in the case of *Splendor Constructions Pvt. Ltd. v. ITO in ITA No.268/Del/2010 dated 17.03.2010*, with the submission that in identical circumstances, penalty levied u/s.

271(1)(c) of the Act in that case was deleted by the Tribunal. Copy of order of Tribunal is placed on record.

6. The Id. DR placed reliance upon the order of CIT(Appeals).

7. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that in the case of *Splendor Constructions Pvt. Ltd. (supra)* in identical circumstances where penalty was levied by the Assessing Officer was deleted by the Tribunal. The relevant observations of the Tribunal are extracted hereunder for the sake of reference:-

“2. Rival contentions have been heard and record perused. Facts in brief are that during the year, the assessee company had declared long term capital gain on sale of land owned by it. From the details furnished by the assessee during the course of assessment proceedings, it was discovered that the company purchased this land in the financial year 1998-99 and some improvements were made on it. In the balance sheets filed in consecutive years the land was shown as ‘stock in trade’ and its value/cost as on 31.3.2002 was reflected at Rs.3,46,63,069/-. In the balance sheet as on 31.3.2003 filed with the return of income, no stock-in-trade was declared. The assessee company claimed that during the financial year under consideration it had converted its stock-in-trade comprising of the impugned land into ‘investment’ and sold the same on 12.12.2002 to another company i.e. M/s Premier Tyres Ltd. for Rs.6,00,00,000/-. The difference in the sale consideration and the cost of purchase which came to Rs.2,53,36,931/- was declared as long term capital gains. The income from long term capital gain was declared at Rs.1,66,09,750/- after claiming benefit of indexed cost of acquisition. In the assessment order, the period of holding the asset was reckoned from the date when it was converted as ‘investment’ from ‘stock in trade’ and since it was less than three years, the gain was treated as short term capital gain and taxed as such. In respect of the addition made, the AO levied penalty u/s

271(1)(c) and the same was confirmed by the CIT(A). Against the order of CIT(A), the assessee is in further appeal before us.

3. It was contended by the learned AR that whether the asset as a long term capital asset or short term capital asset was a debatable issue and in respect of the addition so made, substantial question of law was admitted by the Hon'ble High Court. He further contended that in view of the decision of the ITAT Ahmedabad Bench in the case of Roopam Mercantile – 91 ITD 273 for concealment of income, where a plea or claim which is held by the High Court to have given rise to a substantial question of law, cannot be treated to be frivolous or mala-fide as to attract levy of penalty u/s 271(1)(c). In view of the order of the Hon'ble Delhi High Court dated 16.9.2009, wherein substantial question of law had been admitted by the Hon'ble High Court. Applying the proposition of law laid down by the ITAT Ahmedabad Bench, he contended that penalty is not leviable u/s 271(1)(c).

4. Respectfully following the proposition of law laid down by the Coordinate Bench as discussed hereinabove, where a plea or claim which is held by the High Court to have given rise to a substantial question of law, cannot be treated to be frivolous or mala-fide so as to attract levy of penalty u/s 271(1)(c). Accordingly, we hold that it is not a fit case for levy of penalty.”

8. Since the Tribunal has taken a particular view on similar set of facts and circumstances of the case, we find no justification in taking a contrary view in this appeal. Accordingly, we set aside the order of CIT(Appeals) and delete the addition.

9. In the result, the appeals of the assessee viz., ITA No.2478/Del/2007 is dismissed, whereas ITA No.4242/Del/2009 is allowed.

Pronounced in the open court on this 21st day of September 2016.

Sd/-

(L.P. SAHU)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

New Delhi,
Dated, the 21st September, 2016.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Assistant Registrar,
ITAT, New Delhi.